

IN THE SENATE OF THE UNITED STATES.

JANUARY 17, 1859.—Referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

HEIRS OF GEORGE YATES *vs.* THE UNITED STATES.

1. The petition of the claimants.
2. Letter from Auditor of Treasury in answer to the order of the Court; also letter from the same to Deputy Solicitor, transmitted to House of Representatives.
3. Claimants' brief transmitted to House of Representatives.
4. Deputy Solicitor's brief.
5. Opinion of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at Washington, this 17th day of January,
[L. s.] A. D. 1859.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE UNITED STATES COURT OF CLAIMS.

DISTRICT OF COLUMBIA,
County of Washington.

The petition of the heirs of Doctor George Yates, deceased, late a surgeon's mate in the continental line of Virginia during the war of the revolution, respectfully sheweth unto your honors:

That the government of the United States is justly indebted to them in the sum of \$2,400, with interest at six per cent. per annum on the same, from November 4, 1783, till paid.

For that whereas, heretofore, to wit, during the revolutionary war, the said Doctor George Yates was a surgeon in hospital department of

the American army, and "continued in said service to the end of the war," as is shown by the public records now on file in the Executive Department of the government at Washington; that their said ancestor, the said George Yates, was regularly commissioned as a "surgeon's mate," and as such discharged and performed all the duties of hospital surgeon to the end of the war.

Petitioners would represent, that by a resolve of Congress, dated October 21, 1780, giving to "all officers who continued in service to the end of the war, half-pay for life," the said George Yates was entitled to receive the same. And further, that, by a resolve of Congress, dated January 17, 1781, the officers of the "hospital department and medical staff," in lieu of half-pay for life, became entitled to receive the "half-pay of a captain;" and further, that by the resolve of March 22, 1783, "all the officers belonging to the hospital department," who were entitled to half-pay by the resolution of January 17, 1781, became entitled to receive "five years' full pay in money, or securities on *interest* at six per cent. per annum, as Congress shall find most convenient, instead of the half-pay for life promised by the resolution of October 21, 1780;" and the said George Yates having agreed to accept the said five years' full pay, in manner and form as provided for in said resolution of March 22, 1783, in lieu of his half-pay for life, the government of the United States thereby became bound in law and equity to pay to the said George Yates the said five years' full pay of a captain, to wit, \$40 per month, or \$2,400 for the said term of five years, with interest thereon from November 4, 1783, till paid.

But your petitioners represent, that the said government of the United States failed and refused to pay the said sum and interest, or any part thereof, to the said George Yates in his lifetime, and hath refused and still doth fail and refuse to pay the same, or any part thereof to your petitioners as his heirs at law, to their damage twenty thousand dollars.

Your petitioners memorialized the Congress of the United States, and at the second session of the 25th Congress the Committee on Revolutionary Claims in the House of Representatives reported a bill for their relief, (see report 854, and bill 772;) and at the 3d session of the 27th Congress a joint resolution was submitted for their relief, which was reported on, but no further action had.—(See resolution 138, report 257, 3d session, 27th Congress.) On January 9, 1844, the memorial of your petitioners was again submitted to the Senate of the United States, and referred to the Committee on Revolutionary Claims. Said committee reported adversely, January 25, and the memorial was recommitted, with additional documents. On February 13, 1844, there was another adverse report, and the report was ordered to lie on the table.

Such was the action of the Congress of the United States, on the claim of your petitioners; but in the case of Maria Stevenson, widow of Doctor George Stevenson, of Pennsylvania, a similar case in every respect to that of your petitioners, the Committee on Revolutionary Claims in the Senate, the 13th day of February last, made the following report, with the accompanying bill:

In the Senate of the United States—February 13, 1855.—(Ordered to be printed.)

Mr. Evans made the following report: (To accompany bill S. 647.)

The Committee on Revolutionary Claims, to whom was referred the petition of Maria Stevenson, praying to be allowed the commutation pay to which her husband was entitled for services as a surgeon's mate in the general hospital during the revolutionary war, report:

That there is no doubt that the husband of the petitioner, George Stevenson, was a surgeon's mate, and served to the end of the war. The *strict* construction put on the resolution of January 17, 1781, by the officers of the government, prevented him from receiving his commutation when other officers were settled with. Within the last *twenty* years, however, a more liberal construction has prevailed. Both branches of Congress have at different times passed bills providing for this class of officers, although only one is known to have become a law: the case of John Knight, approved June 15, 1832.—(See the report of the committee of House of Representatives on the case of Samuel Y. Keene; Revolutionary Claims, 462.)

The committee think this liberal construction *is the true one*, and report a bill for the relief of the petitioner.

S. 647.—*In the Senate of the United States, February 13, 1855.*

Mr. Evans, from the Committee on Revolutionary Claims, submitted a report, (No. 514,) accompanied by the following bill; which was read, and passed to a second reading.

A BILL for the relief of Maria Stevenson, widow of George Stevenson, deceased.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, required to pay, out of any money in the Treasury not otherwise appropriated, to Maria Stevenson, widow of George Stevenson, deceased, five years' full pay of surgeon's mate in the continental line of the army of the revolution, being the full amount of the sum due to the said George Stevenson, deceased, for commutation of half-pay as surgeon's mate in the Pennsylvania continental line of the revolutionary army: *Provided*, That the said sum shall be received in full of all demands against the government.

The said report of the Senate states that "both Houses have at different times passed bills providing for this class of officers, although only *one* is known to have become a law: the case of John Knight, approved June 15, 1832." In addition to this case, your petitioners would cite, as illustrative of the legislative interpretation of the resolve of Congress of January 17, 1781, the following cases allowed by Congress as embraced within the strict letter of the said resolution, viz: Dr. Samuel J. Axson, of South Carolina, surgeon's mate—See

U. S. Statutes at Large, vol. 6, p. 494 ; Dr. Joseph Prescott, of South Carolina, surgeon's mate—*Ib.*, p. 732 ; Dr. Wm. Cogswell, of Massachusetts, surgeon's mate—*Ib.*, p. 718 ; and the case of Dr. Joseph Savage, of Virginia, surgeon's mate, passed on the 2d day of March, 1855. In this last cited case the committee say, " that by every principle of right and equity, the case is within the strict letter of the resolve of Congress."

Petitioners would further represent unto your honors, that they are solely interested in said claim, and became thus interested as the heirs at law of the said George Yates, deceased ; and after due proceedings had in the premises, they pray your honorable court to frame and report to the United States Congress a bill for their relief, appropriating to their use and benefit the sum of two thousand and four hundred dollars, with legal interest thereon from the 4th day of November, 1783, till paid. And as in duty bound, your petitioners will ever pray, &c.

ALEXANDER H. EVANS,
Attorney for the Claimants.

STATE OF VIRGINIA,
County of Alexandria:

Personally appeared before the undersigned authority, a justice of the peace in and for the county aforesaid, Reuben Zimmerman, one of the heirs at law of Doctor George Yates, who, after being duly sworn, says, that the facts set forth in the foregoing petition are true, to the best of his knowledge and belief.

R. ZIMMERMAN.

Subscribed and sworn to this the 17th day of August, 1855.

C. F. SUTTLE, J. P.

IN THE COURT OF CLAIMS.—No. 183.

HEIRS OF DR. GEORGE YATES *vs.* THE UNITED STATES.

Solicitor's Brief.

This is a claim for the commutation granted to officers of the revolutionary army by resolution of March 22, 1783.—(4 Journals, 178.)

1. *Yates was not entitled to the benefits of that resolution.* It promised commutation only to such medical officers as were entitled to half-pay by the resolution of January 17, 1781.—(3 Journals, 569.) Yates was only a surgeon's mate, and surgeons' mates were not provided for in the resolution of 1781. Yates therefore not being entitled to half-pay by the resolution of 1781, was not entitled to commutation under the resolution of 1783.

It is true, however, that the resolution of March 22, 1783, offered

commutation to all "officers" entitled to half-pay under the resolution of October 21, 1780, and that surgeons' mates are mentioned in the latter resolution as part of the regiments. We contend, nevertheless, that the medical officers were not entitled to half-pay under this resolution.

In the year 1780, Congress was engaged in the work of remodeling the army. On the 15th of July (3 Journals, 488) they arranged the quartermaster department; on the 30th of September, (id., 526,) the medical and hospital department; on the 3d and 21st of October, (id., 532, 538,) the regiments or line of the army; on the 30th of November, (id., 521,) the commissary department. Only in the resolution of October 21, 1780, was half-pay given, and it was given to the "officers" only. Were the surgeons and surgeons' mates *officers*, within the meaning of this resolution?

It is true that surgeons and mates are styled *officers* in the resolution of September 30, 1780, organizing their department, and by that description are distinguished from "other persons employed in any of the hospitals." By that description, too, they received pay and bounty land under the same resolution. But in the resolution of October 21, 1780, the word, we contend, was used in a different sense.

It is historically known that the half-pay establishment was adopted by Congress upon the urgent solicitation of General Washington.

In January, 1788 Washington urged the measure upon Congress, (see his letter, printed in a foot note, 4 Journals, 211,) and Congress granted half-pay for seven years by resolution of May 15, 1778, (2 Journals, 554,) limiting the grant to "military officers." This grant was continued by resolution of October 3, 1780, reorganizing the line, using, however, the descriptive term of "officers," there being none other than military officers named in the resolution. This resolution of October 3 was passed, subject to the approval of the commander-in-chief. In a communication to Congress, dated October 11, 1780, (printed in a foot note, 4 Journals, 212,) Washington recommended, among other modifications of the resolution of October 3, 1780, that the grant of half-pay should be extended for life. This was done by the resolution of October 21, 1780. It nowhere appears that it was the design of Congress, in the resolutions of October 3 and 21, to embrace new classes of officers. This, however, was done by subsequent resolutions—to general officers, by resolution of November 28, 1780, (3 Journals, 551;) to medical officers, by resolution of January 17, 1781, (id., 569,) and to chaplains, by resolution of May 8, 1781, (id., 617.)

The resolution of January 17, 1781, extending the grant of half-pay to medical officers, is stated in the preamble to have been passed upon consideration of a letter from General Washington, dated November 5, 1780. A copy of that communication is filed in this case. It there appears that the hospital surgeons chose to consider the resolution of October 21, 1780, as giving the regimental surgeons half-pay; and thereupon they claimed the same provision. General Washington doubted, and asked the directions of Congress, which were given in the resolution of January 17, 1781. This reso-

lution ignores all claim under the resolution of October 21, 1780, and makes an original grant of half-pay to all medical officers. These proceedings upon the subject clearly show "the manner in which it was considered by the legislative authority at the time."

We contend that, upon a view of all these resolutions, being *in pari materia*, that of October 21, 1780, should not be construed to embrace surgeons' mates in the promise of half-pay.

Baird's case, decided by this court, is cited in opposition to this view; but it is in our favor. Baird was allowed by this court half-pay under the resolution of January 17, 1781, *i. e.*, the half-pay of a captain, \$240 per annum. Had he been allowed half-pay under the resolution of October 21, 1780, he would have been entitled to half his own pay, which was \$65 per month, and his allowance would have been \$390, instead of \$240 per annum. Moreover, when it was objected that the resolution of October 21, 1780, embraced only military officers, this court said that, however that might be, Baird was a regimental surgeon within the description of the resolution of January 17, 1781.

But if regimental surgeons' mates were entitled to the benefits of the resolution of October 21, 1780, it is not proved that Yates was a regimental mate. The evidence shows only that he was a surgeon's mate, without distinguishing whether he was in the hospital department or in a regiment.

2. *This claim is barred by limitation* under the resolutions of November 2, 1785, and July 23, 1787, (4 Journals, 683, and 702,) and the act of February 12, 1793, (1 Stat., 301.)

JNO. D. McPHERSON,

Deputy Solicitor.

IN THE COURT OF CLAIMS.

HEIRS OF DOCTOR GEORGE YATES, *vs.* THE UNITED STATES.

Judge BLACKFORD delivered the opinion of the Court.

It is alleged that George Yates, the intestate, was surgeon's mate in the revolutionary army, and entitled to half-pay for life; and that, being so entitled, he is embraced by the resolve of Congress of March 22, 1783, by which commutation of five years' full pay is given to those revolutionary officers who were entitled to half-pay for life.

It is for such commutation that this suit is brought.

The said resolve of 1783 gives the commutation to those officers who were entitled to half pay for life under the resolve of Congress of October 21, 1780, or that of January 17, 1781; and we must therefore inquire whether surgeons' mates were entitled to half-pay for life under either of the two last mentioned resolves.

The resolve of the 21st October, 1780, says that the officers who shall continue in the service to the end of the war shall also be entitled to half-pay during life, to commence from the time of their reduction. General Washington, in a letter to Congress of the 5th

of November, 1780, says, among other things, "that in the British army, from whence most of our rules and customs are derived, and in which long experience and improvement has brought their system as near perfection as in any other service, the surgeons of the hospital and regimental surgeons are, upon reduction, entitled to half-pay. The mates in both, I believe, are not." Congress soon afterwards, having considered that letter, passed the aforesaid resolve of the 17th January, 1781. That resolve provides that certain half-pay for life should be paid to the officers therein mentioned, of the hospital department and medical staff, who should serve to the end of the war, or become supernumerary. But surgeons' mates are not mentioned.

Our opinion is, that the resolves of 1780 and 1781, together constitute one system, and are to be construed as if passed at the same time; and that they do not embrace surgeons' mates; and we cannot, therefore, consider them entitled to commutation under said resolve of 1783. It is stated by the Committee on Revolutionary Claims, in 1838, that the board of war, in 1784, decided that said resolve of 1783 was not applicable to surgeons' mates; and the committee state, also, that the Continental Congress was of the same opinion.—(Book of Rev. Claims, 462.)

We think that the claimants have no cause of action.

